

STATE OF MARYLAND
State Labor Relations Board

Maryland Classified Employees
Association, Inc.,

Petitioner

v.

Department of Budget and
Management

and

American Federation of State,
County & Municipal Employees,

Intervenor

SLRB Case No. 08-U-05

**DECISION DENYING DBM'S MOTION TO DISMISS
AND DELEGATING CASE TO OAH**

This case originally came to the State Labor Relations Board ("the Board" or "SLRB") on the complaint of the Maryland Classified Employees Association (MCEA) alleging that the Department of Budget and Management (DBM) improperly denied the Union access to its state facilities for state-sponsored employee training events, in violation of the State Personnel and Pension Article §§ 3-301(a)(1) and 3-306(a)(1). DBM filed a motion to dismiss the complaint, on the grounds that MCEA has failed to state a claim for which relief may be granted, and MCEA opposes this motion.

As shown below, the SLRB finds that there are triable issues of facts to resolve, and accordingly denies DBM's motion to dismiss, and delegates this issue for hearing before the Office of Administrative Hearings (OAH).

Standard of Review and Applicable Facts

Although the SLRB does not currently have regulations governing the standard to be applied to a motion to dismiss, the standard under the law of Maryland is clear. When reviewing a "motion to dismiss a complaint for failure to state a claim upon which relief can be granted, a court must 'assume the truth of all well-pleaded facts and allegations in the complaint, as well as all inferences (favorable to the pleader) that can be reasonably drawn from them.'" *Lloyd v. General Motors Corp.*, 397 Md. 108 (2007)(quoting *Morris v. Osmose Wood Preserving*, 340 Md. 519, 531 (1995)). A court (or tribunal) will only order dismissal if, after assuming the

allegations and permissible inferences stemming therefrom to be true, the plaintiff would not be afforded relief. *Lloyd*, 397 Md. at 121 (citations omitted). Moreover, Maryland Rule 2-322(b) notes that a respondent may seek a dismissal on the ground that the complaint “fails to state a claim upon which relief may be granted.”^{1/}

Thus, construing all the factual allegations made in the complaint as true, and by agreement of the Respondent, the following are the pertinent facts for the purpose of this motion to dismiss:

- (1) MCEA is an employee organization that represents State employees
- (2) In the past, the State has on occasion permitted MCEA to make presentations to correctional training academy graduates, to employees at State sponsored health fairs, and to employees at new employee orientations.
- (3) MCEA has been denied access to Division of Corrections training academies in Western Maryland, and to all county health departments.
- (4) DBM’s Executive Director of Personnel Services and Benefits has stated that the reason for the denial of access is that only the exclusive bargaining representative for any bargaining unit is entitled to access at new employee orientations, health fairs and training academies.
- (5) DBM’s Executive Director of Personnel Services and Benefits has advised MCEA that the State may permit the exclusive bargaining representatives to have greater access to employees in order to fulfill their bargaining responsibilities.

Analysis

MCEA has asserted in its complaint that, through the above actions, DBM has violated State Personnel and Pension Articles 3-306(a)(1) and 3-301(a)(1)^{2/} by excluding MCEA from the state-sponsored events where they had previously been allowed to participate. Although MCEA acknowledges that it is not the exclusive bargaining representative for the employees who participate at the events, MCEA has a legal and enforceable right to represent state employees in

^{1/} DBM asserts that MCEA has converted this motion into a summary judgment motion, by attaching documents to its papers, citing to Maryland Rule 2-501. While DBM is correct that such an introduction of documentary evidence can convert a motion to dismiss into a motion for summary judgment, the Board chooses not to do so in this case. The Board does not find that this forum is the best one for hearing summary judgment motion at this time (i.e. before additional fact finding has been accomplished), nor are we convinced that we have received all applicable documents and evidence on the relevant issues. Therefore, the Board has decided to disregard and exclude the documentary evidence submitted by both parties in deciding this motion, and analyzes this as a motion to dismiss. DBM will have the opportunity to renew its motion, as a motion for summary judgment, before the OAH, if it so chooses.

^{2/} State Personnel and Pensions Section 3-306(a)(1) provides: “The State and its officers, employees, agents or representatives are prohibited from engaging in any unfair labor practice, including: (1) interfering with, restraining, or coercing employees in the exercise of their rights under this title.” State Personnel and Pensions Article 3-301(a)(1) provides: “Employees subject to this title have the right to: (1) take part or refrain from taking part in forming, joining, supporting, or participating in any employee organization or its lawful activities.”

matters that concern state employment through the grievance and appeals processes codified at Titles 11 and 12 of the State Personnel and Pensions Article.

DBM filed a motion to dismiss the complaint, on the grounds that MCEA had no right to be present at the events. Although DBM acknowledges that MCEA had been allowed to participate in the past, DBM asserts that it changed its policy and the only groups now invited are currently engaged in a contractual relationship with the State (including State-sponsored programs and non-profit organizations approved by the Employee Benefits Division). DBM further argues that DBM has the legal right to restrict access of organizations to non-public forums such as these, so long as such restrictions are reasonable in light of the purpose served and are viewpoint neutral (citing Supreme Court law).^{3/} DBM asserts that there is no evidence that DBM discriminated against MCEA, or any other organization, by excluding them from these non-public employee benefits forums.

MCEA responds that there are triable issues of fact outstanding and that, therefore, the Board should not grant the motion to dismiss the complaint. We note that there are three separate forums here (i.e. health fair, employee orientation and correctional training academies)—and therefore, potentially three different legal standards to apply, depending on whether the Board judges those forums to be public, non-public or limited public forums. While DBM asserts that all of the forums are either limited public forums or non-public forums (and therefore that DBM is not required to open the events up for other participants), MCEA asserts that the functions are held in open meeting areas and a trier of fact could reasonably determine that the three forums might be distinguishable in terms of public access (and therefore what legal standard applies). MCEA also asserts that their purpose in attending such conferences/gatherings is to demonstrate the benefits that MCEA can provide to employees, including insurance benefits and the ability to represent its members in grievances and disciplinary appeals.

On the face of the complaint and by agreement of the parties, it appears that DBM, which had previously permitted attendees from the general public at its employee fairs/training, decided to convert those gatherings into non-public events with access limited to contractors with the state. It may well be that DBM had the absolute right to do so and did so in a non-discriminatory fashion, but certain factual issues need to be resolved before the Board can determine this, including:

- (1) what (if any) access did members of the public have to each state-sponsored event (both before and after DBM announced the change in policy);
- (2) why did DBM change its policy and begin to exclude the Union (and others) from the

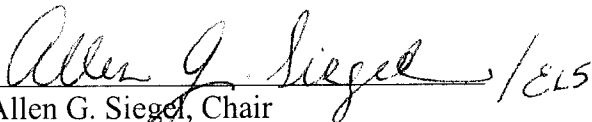
^{3/} Both MCEA and DBM cite *Perry Education Assn. v. Perry Local Educators' Assn.*, 460 U.S. 37 (1983) and *Cornelius v. NAACP Legal Defense and Educational Fund, Inc.*, 473 U.S. 788, 806 (1985). We agree that those cases contain the applicable Supreme Court precedent for determining whether the three events at issue (i.e. health fairs, training academies and new employee orientations) are public, non-public or limited public forums. However, we find that the facts of the case must be developed (through admission of evidence and witness testimony) to determine which of the legal standards apply to each forum.

three state-sponsored events; and
(3) did DBM apply its new policy (including only contractors) in a non-discriminatory manner?

In order to answer the above questions, the fact finder will need to hear evidence on what parties were invited to the events (both in the past and in the present), which parties were excluded, and the reasons for DBM's change in policy. This Board finds that the Office of the Administrative Hearings is best equipped to hear and consider the evidence on these issues. Accordingly, we delegate this case to the OAH, with specific instructions to focus on the factual questions listed above.

**By Order of the Maryland State Labor Relations Board
Annapolis, MD**

March 14, 2008


Allen G. Siegel, Chair
Maryland State Labor Relations Board